DELL K. HATCH
AMOCO PRODUCTION CO.

IBLA 77-501 Decided April 11, 1978

Appeal from decision of the Nevada State Office, Bureau of Land Management, rejecting oil and gas lease offers N 9170 and N 9171.

Affirmed.

1. Oil and Gas Leases: Discretion to Lease

> The Secretary of the Interior may, in his discretion, reject any offer to lease public lands for oil and gas, upon a determination supported by facts of record that the leasing would not be in the public interest because it is incompatible with uses of the lands which are worthy of preservation. Where the land is being used as a habitat for endangered animals, is a natural scenic asset, and has potential recreational value, and where BLM determines that oil and gas operation would result in unavoidable adverse impact on these attributes, rejection of the lease offer will be affirmed in the absence of countervailing compelling reasons.

APPEARANCES: Dell K. Hatch, pro se; V. C. McClintock, Esq., Denver, Colorado, for Amoco Production Co.

OPINION BY ADMINISTRATIVE JUDGE STUEBING

Dell K. Hatch (appellant) filed eight over-the-counter oil and gas lease offers for lands in Nevada, including two designated as N 9170 and N 9171 by the Nevada State Office, Bureau of Land Management (BLM). On July 15, 1977, BLM issued a decision rejecting these two offers, holding that issuance of oil and gas leases would be incompatible with a combination of other resource values of the lands, including its value as a habitat for bighorn sheep, gila monsters,

desert tortoises, and golden eagles, its value as a potential recreational development area, and its value as a scenic resource. Appellant, as the offeror, and Amoco Production Company, as the owner of a right to assignment of appellant's potential lease interest, have appealed from this decision. We affirm.

[1] The Secretary of the Interior, through his duly authorized representative BLM, has the authority to refuse to lease lands for oil and gas purposes, even if the lands have not been withdrawn from the operation of the general mining and mineral leasing laws. L. A. Idler (Supp.), 28 IBLA 8 (1976); Cartridge Syndicate, 25 IBLA 57, 58 (1976); T. R. Young, Jr., 20 IBLA 333, 335 (1975); Richard K. Todd, 68 I.D. 291, 295-96 (1961), aff'd sub nom., Duesing v. Udall, 350 F.2d 748 (D.C. Cir. 1965), cert. denied, 383 U.S. 912 (1966). As the Supreme Court noted in Udall v. Tallman, 380 U.S. 1, 4 (1963):

> The Mineral Leasing Act of 1920, 41 Stat. 437, 30 U.S.C. § 181 et seq. (1958 ed.), gave the Secretary of the Interior broad power to issue oil and gas leases on public lands not within any known geological structure of a producing oil and gas field. Although the Act directed that if a lease was issued on such a tract, it had to be issued to the first qualified applicant, it left the Secretary discretion to refuse to issue any lease at all on a given tract. United States v. Wilbur, 283 U.S. 414. [Emphasis supplied.]

We have held that BLM may decide to refuse to issue a lease, provided that it sets forth its reasons for doing so, and provided that the background data and facts of record support the conclusion that the refusal is required in the public interest. Cartridge Syndicate, supra at 59. Where the record describes a devotion of the land to a public purpose which is worthy of preservation and indicates that the development of an oil and gas field would be incompatible with this public purpose and would be less in the public interest than preserving the status quo, BLM's decision not to issue the lease will be affirmed in the absence of compelling reasons for its modification or reversal. Duncan Miller, 31 IBLA 371 (1977); Duncan Miller, 31 IBLA 351 (1977); Duncan Miller, 30 IBLA 350, 352 (1977); L. A. Idler (Supp.), supra at 10; Rosita Trujilla, supra at 291. We have recognized the following, inter alia, as valid public purposes: the use of lands as wintering ground for elk, L. A. Idler (Supp.), supra, and as a habitat for fish, Rosita Trujillo, supra, and the California condor, Jack E. Griffin, 7 IBLA 155 (1972); and the preservation of the land as an aesthetic or scenic asset. Duncan Miller (three cases), supra; Rosita Trujillo, supra; Dean W. Rowell, 13 IBLA 249 (1973).

The record in the instant case contains background material describing a devotion of the lands to public purposes which are

worthy of preservation, including its uses as a habitat for a variety of endangered animals, and as a natural scenic and potential recreational asset. BLM compiled this record from a variety of sources in both the Federal and Nevada State governments. Its decision was not arbitrary or capricious as it but rather was based on convincing reports showing as a matter of fact that the granting of these leases would not be in the public interest. Jack E. Griffin, supra at 157; John R. Roderick, A-29044 (March __ 1963). BLM balanced the benefits of establishing a new energy source and, while determining as to four of appellant's other offers that these benefits outweighed the environmental risk, properly concluded as to the two in question here that the offers should be rejected, as the resource values of the land could not be protected if they were accepted. 1/

Appellant merely alleges generally here that BLM's decision was arbitrary and that it did not properly balance the public interests in preserving the status quo against those in developing the energy source. We have already answered these allegations. Appellant has

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1/ The report summarizing the record here, on which BLM based its decision, provides in part as follows:

"1) We recognize the need for new sources of energy, particularly oil and gas, in the U.S.; in fact, energy is one of BLM's top priorities. Such needs are discussed by the Mining Engineer in his memo. Oil and Gas exploration and development should be encouraged whenever and wherever possible in a manner consistent with the multiple use objectives of BLM. The following leases are in areas where no serious resource conflicts have been identified:

N-7307 T. 19 S., R. 66 E., Sec. 21
N-9163 T. 18 S., R. 65 E., Sec. 22
N-9168 T. 18 S., R. 65 E., Sec. 35
N-12657 T. 19 S., R. 66 E., Sec. 27

"It is recommended that these leases be granted subject to the standard stipulations that appear on the oil and gas leasing form.

"2) On the other hand, some of the leases are in areas where, it is believed, oil and gas exploration or development could result in irreversible and irretrievable commitments that are inconsistent with BLM's responsibility to protect the environment. The most serious conflicts were identified in:

N-9170 T. 19 S., R. 65 E., Sec. 1, 2, 11 & 12
N-9171 T. 19 S., R. 65 E., Sec. 4, 9 & 10

* * * * * * *

"It is [the] combination of resource values which are thought to be so incompatible with some unavoidable impacts of oil and gas exploration and development (dust, noise, soil and vegetation disturbance, increased access along new roads, etc.) that leads us to believe that even stringent stipulations would not sufficiently protect other resources. It is therefore recommended that these applications be denied." [Emphasis supplied.]

shown no compelling reasons from which we might conclude that BLM's decision was not correct. Since BLM's decision was based on a well-developed and convincing record showing that preservation of the resource values of the lands in combination, would be incompatible with oil and gas exploration and development, we affirm it.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

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Edward W. Stuebing
Administrative Judge

We concur:

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Joan B. Thompson
Administrative Judge

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Newton Frishberg
Chief Administrative Judge